UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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PRINCE BRELAND, ANNIE COLEMAN and MAXIME DIATTA, individually and on behalf of all others similarly situated,

08-cv-6120 (DF)

Plaintiffs,

-against-

GEOFFREY ZAKARIAN, COUNTRY IN NEW YORK, LLC, ADAM BLOCK, 3SIXTY HOSPITALITY, LLC and MOSHA LAX,

Defendants.
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DECLARATION OF SCOTT A. LUCAS IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL

I, Scott A. Lucas, upon personal knowledge and under penalty of perjury, pursuant to 28 U.S.C. § 1746, declare that the following statements are true and correct:

1. I am an attorney admitted to practice before this Court and am the principal of the Law Offices of Scott A. Lucas, attorneys for the Named Plaintiffs and the Class in this matter. My knowledge of the matters described herein is based on my familiarity the prior proceeding in this case and the underlying facts as reflected in the parties' respective submissions as well as the documents, witness interviews and deposition testimony in this action.

2. I submit this Declaration in support of the motion of the Named Plaintiffs and the Class (collectively, "Plaintiffs") for final approval of the Joint Stipulation of Settlement (the "Settlement") that was preliminarily approved by the Court on March 1, 2012.

3. This is a wage and hour case seeking recovery for: **(A)** unpaid overtime and liquidated damages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, *et seq.*; **(B)** unpaid overtime under New York Labor Law ("NYLL") § 663.1 and § 142-2.2 of Title 12 of the Compilation of Codes Rules & Regulations Of the State of New York ("NYCRR"), and a 25% penalty under NYLL § 663.1; and **(C)** reimbursement of unlawful paycheck deductions under NYLL § 193 and a 25% penalty under NYLL § 198.1-a, together with attorney's fees, interest and costs. The case was previously certified as a Rule 23 class action with respect to the NYLL claims (hereafter, the "Class Claims"), and as a collective action under 29 U.S.C. § 216(b) with respect to the FLSA claims (hereafter, the "Collective Action Claims"). The Class Claims and the Collective Action Claims are referred to herein collectively as the "Wage Claims".

4. There have been no objections to the Settlement, and no opt-outs.

5. Previously the Court approved a partial settlement which, in exchange for settlement payments totaling $200,000, resolved the claims against all the defendants *except for* Geoffrey Zakarian ("Zakarian"). The terms of that partial settlement have been fully effectuated, except for the disposition of $11,158.44 in unclaimed funds from that settlement, which will be included as part of the funds to be distributed in the instant (final) settlement.

6. Plaintiffs have now agreed to settle with Zakarian for an additional $200,000 in settlement funds (bringing to $400,000 the total amount secured in settlement funds in this case).

7. The Settlement Agreement funds are allocated as follows: **(A)** $156,158.44 (consisting of $145,000 from Zakarian, and an additional $11,158.44 in undistributed funds from the earlier settlement with Moshe Lax and Country in New York, LLC) will be allocated to Class Members as set forth in Ex. B hereto; **(B)** approximately $47,000 will be paid to me as attorney's fees (in accordance with the payment scheduled contained in the Settlement Agreement), provided that while not an employer of any Class Member, I will nonetheless advance the employer's share of payroll taxes on the wage payments referenced in the Settlement Agreement, subject to my later recoupment of same from any unclaimed settlement funds (*i.e.*, from

settlement checks that are never cashed); and **(C)** approximately $8,000 will be paid to the Settlement Administrator (Rust Consulting, Inc.) for the costs of administering this settlement, provided that I will be responsible for paying any costs of the Settlement Administrator that exceed $8,000.

8. The Settlement Administrator will be exclusively responsible for the delivery of the settlement checks to each Class Member within 30 days of the date this Final Order and Judgment is entered. One-half (50%) of the Settlement Administrator's payments to Class Members pursuant to the Settlement Agreement shall be treated as wages and the other half (50%) shall be treated as liquidated damages.

9. Ex. "B" hereto is a list of the Class Members and the gross amounts of the respective checks that the Settlement Administrator will mail to them to effectuate the terms of the Settlement Agreement with Zakarian.

Attorney's Fees / Experience and Competence of Counsel

10. Attorney's Fees: I have spent well over 1,200 hours to date investigating and litigating this case. See Ex. "C" hereto, a detailed and contemporaneously-maintained breakdown of the first 876 hours expended on this matter, after which my firm switched its billing program. Since the amount of hours far exceeds the amount of attorney's fees requested, the

remaining 325+ hours are not included in the attached breakdown, but are available for the Court's inspection upon request. Aside from being reimbursed for out-of-pocket costs, the only compensation I have asked for or accepted to date for litigating this case has been $10,208, which, together with reimbursement for the out-of-pocket costs then expended, was received in connection with the partial settlement earlier in the case with Defendants other than Zakarian.

11. Compensation of approximately $47,000 for Class Counsel would only represent a very small fraction of what I would receive if Zakarian were solvent. Accordingly, the award for attorney's fees is clearly reasonable.

12. Experience of Class Counsel: As attorneys admitted to practice before this Court, I am entering my 18th year of practice and Steven M. Sack, who is "of counsel" to my firm, is in his 32nd year of practice. We are highly experienced in wage and hour litigation, including complex multi-party litigations in the restaurant industry.

13. Together with Steven M. Sack, I successfully litigated the case of *Samiento, et al. v. World Yacht, Inc., et al.*, 10 N.Y.3d 70 (2008), now the leading case under New York's tip appropriation statute, Labor Law § 196-d. Prior to *Samiento*, restaurants and banquet operators in ever-increasing

numbers throughout the State of New York were engaging in the practice of keeping some or all of the percentage-based “service charge” added to the bill in place of the tip, instead of distributing those monies to the waitstaff. Unfortunately, the banquet operators were armed with certain administrative opinions and an appellate decision that were said to justify such behavior.

14. Mr. Sack and I took the case recognizing that we would probably not succeed unless we made it all the way to the State’s high court, which, fortunately, we did. The New York Court of Appeals’ decision in *Samiento* ushered in substantial changes throughout the restaurant and banquet industry across the State.

15. I have also been certified as class counsel in two other restaurant industry class actions.

16. I also have sufficient trial experience. For example, I tried the case of *Brown v. Suggs*, Index No. 605492-00 (New York Country Supreme Court, Nov. 2007), the verdict of which was the subject of a New York Times article and was also reported by the American Association of Justice’s Law Reporter and New York Magazine. The *Brown v. Suggs* trial followed an extraordinarily difficult, complex and hard-fought litigation, culminating in a $2.6+ million jury verdict and a separate award of punitive damages in

an amount to be determined at a later date. The verdict was subsequently upheld, albeit in a reduced amount.

17. My knowledge of the applicable law is substantial and up-to-date. As a member of the National Employment Lawyers Association, I am an avid reader of the legal posts on NELA's list-serve, and I scour the New York Law Journal each day for cases and articles that relate to wage and hour law.

18. As for Mr. Sack, he not only is an experienced employment law practitioner, but has been repeatedly recognized as an expert, and has testified in court numerous times over the past 20+ years as an expert on the subject of employment disputes and industry practices. Mr. Sack is also the author of 19 legal books, including *The Employee Rights Handbook*, *Getting Fired* and *The Working Woman's Legal Survival Guide*.

19. The recently released latest edition of *The Employee Rights Handbook* is 620 pages, and has already been named the winner of the USA Book News National Best Books 2010 award in the category of Business Reference.

Conclusion

20. Under the circumstances, the Agreement to settle with Zakarian for $200,000 in settlement funds is fair, reasonable, and adequate and in the best interests of the Class, especially because Zakarian filed for bankruptcy and is not known to have any meaningful assets.

21. The fact that no one has objected or opted out also weighs heavily in favor of the Settlement. Accordingly, the Settlement should be finally approved. A proposed Final Order and Judgment is attached hereto as Ex. "D," and will also be emailed to the Orders and Judgments clerk.

WHEREFORE, I respectfully submit that this Court should grant an Order finally approving the Settlement, including the requested award of award attorney's fees.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 4, 2012.

New York, New York

/S/

SCOTT A. LUCAS